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Carl Berger

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EXAMINER

SCHLENTZ, NATHAN W

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Substance of Interview including description of the general nature of what was discussed: The examiner called attorney Kipnes with a follow up question following the interview on 17 February 2009. The examiner directed attention to page 14, lines 2-15 of the instant specification wherein it teaches that a preferred embodiment of the invention is to treat the tobacco plant by contacting with an herbivore, such as *Helicoverpa zea*, for a sufficient time to reduce the nicotine content to levels at which the tobacco product produced from the plant becomes non-addictive to humans. The question asked by the examiner is whether this occurs in nature, because it appears that the specification teaches that allowing *H. zea* to feed on tobacco plants for a sufficient amount of time will naturally result in tobacco with non-addictive levels.

Attorney Kipnes argued that there is no evidence to suggest that this occurs in nature, and to the best of his knowledge there is no such thing as non-addictive tobacco plants occurring in the wild as a result of being fed on by *H. zea* or any other herbivore. Attorney Kipnes argued that based on the teachings of Musser et al., one of ordinary skill in the art would expect that when the tobacco plant is damaged by the caterpillar *H. zea*, it increases its production of nicotine. However, the *H. zea* regurgitates saliva that contains glucose oxidase, which counteracts the nicotine production resulting in nicotine levels in the tobacco plant that are the same as the level prior to damage by the caterpillar. Therefore, attorney Kipnes argues that one of ordinary skill in the art in view of the teachings of Musser et al. would expect that feeding by the caterpillar *H. zea* only results in nicotine levels that are the same as non-damaged tobacco plants.